

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Conference Meeting Room
Second Floor, Court House
Boonville, Indiana
September 26, 2007 at 6:00 P.M.

MEMBERS PRESENT: Larry Willis, Chairman of the Board; Duane Erwin, William McCune, Richard Medcalf, Don Mottley and Eric Stahl.

Also present were: Morrie Doll, Attorney; Sherri Rector, Executive Director and Secretary; and Susan Hilgeman, staff.

MEMBERS ABSENT: Terry Dayvolt

MINUTES:

Mr. Willis asked if everyone got a copy of the minutes from August 22, 2007. He asked if there were any corrections or additions to those minutes. There being none he entertained a motion.

William McCune made a motion to accept the minutes from the August 22, 2007 meeting.

Eric Stahl seconded and the motion unanimously carried.

Mr. Willis explained the rules of procedure.

SPECIAL USES:

BZA-SU-07-24 – Applicant & Owner: Ralin Properties, LLC by Stephen F. Bosley, PE; Vice President.

Premises – Property located on the E side of Peachwood Dr. 0' N of the intersection formed by Peachwood Dr. and Fruitwood Dr., Lt 4 in Peachwood of Warrick Place IV and a part of Ohio Twp. 23-6-9, and an addition to Lt 1 in Peachwood of Warrick Place IV, *7498 Peachwood Dr.*

Nature of Case – Applicant requests a Special Use, SU-23, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow six storage units, an addition to BZA-SU-05-35, approved September 28, 2005, in a “C-3” Highway Commercial and “C-4” General Commercial Zoning District.

Mrs. Rector stated that notices were not sent out in the time period that they had to be so this will need to be continued until the October 24th meeting.

Larry Willis entertained a motion to continue BZA-SU-07-24 to the October 24th meeting.

Duane Erwin made a motion to continue BZA-SU-07-24 until the October 24th meeting.

Don Mottley seconded and the motion unanimously carried.

BZA-SU-07-25 – Applicant & Owner: G & G Property Management by Gary Fields, General Partner

Premises – Property located on the E side of Haley Dr. approximately 0' N of the intersection formed by Haley Dr. and Peachwood Dr., Lt 8 & 9 in Peachwood of Warrick Place IV, Ohio Twp., *3665 Haley Dr.*

Nature of Case – Applicant requests a Special Use, SU-15, for the district requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow a preschool daycare with no more than 48 children in a “C-3” Highway Commercial Zoning District.

Gary and Gail Fields and Jim Biggerstaff approached the podium.

Mr. Willis requested a staff report from the Executive Director.

Mrs. Rector stated they do have all the return receipts from certified mail to adjacent property owners. She stated the applicant is requesting a Special Use to allow a pre-school day care. She stated the applicant currently has a day care located on Coal Mine Road which they did get a Special Use for. She stated the property is approximately 1 acre as Lots 8 & 9 Peachwood of Warrick Place IV zoned "C-3" Highway Commercial. She stated the property to the north, south and west is zoned the same and vacant. She stated the property to the east is zoned agriculture and is vacant. She stated the applicant did meet with the Commercial Site Review Committee on August 28th. She stated this is located in the subdivision where Buehler's and those businesses are. She stated she has one question for Mr. Biggerstaff; when they met with the Commercial Site Review, they were just going to be on Lot 8 but this is for Lot 8 & 9.

Mr. Fields stated they actually own Lots 8 & 9.

Mrs. Rector stated what she wants to make clear to them is that there isn't a proposed building on Lot 9 so they would have to amend this application if later on they wish to build another building there. She stated she wants him to know up front this is not giving approval for that because it is not part of the application.

Mr. Fields stated okay.

Mrs. Rector asked Attorney Doll if he agreed.

Attorney Doll stated he agreed.

Mr. Biggerstaff stated it is their intentions to just duplicate the building on the other side once this is done and completed then they would duplicate that building on the adjoining lot to the North.

Mr. Willis asked if the petitioners had anything to add to the Executive Director's report.

Mr. Fields stated no.

Mr. Willis stated they show a parking area on Lot 9. He asked if they need those parking spaces to be compliant on Lot 8.

Mrs. Rector stated no.

Mr. Willis asked if there were any questions by Board Members.

Mrs. Rector asked if they got Drainage Board approval or did they not have to.

Mr. Biggerstaff stated the retention and everything was all part of it so it wasn't required at that time. He stated the drainage goes into the present drainage system. He stated the retention area is actually on Peachwood, on Bernhardt's, the lower section.

Mr. Willis asked if the drainage is all co-mingled with all the lots in the subdivision.

Mr. Biggerstaff stated yes that is correct. He stated this applies to Peachwood IV & V.

Attorney Doll stated if a motion should be forthcoming tonight to approve this, he thinks it has to clearly limit it to only Lot 8 and looking at the drawing, they are not using Lot 9 whatsoever.

Mr. Biggerstaff stated no they are not.

Attorney Doll stated he knows the application states Lots 8 & 9. He asked Mr. Fields if he has any reason to object to the Board dealing just with Lot 8 alone.

Mr. Fields stated no that is fine because they will have to reapply for the other lot anyway.

Mr. McCune stated he will have to create another site plan too and submit that site plan because they are showing that Lot 9 is a parking lot.

Mrs. Rector stated they will just mark off Lot 9 and the petitioner can initial it.

Mr. Willis asked if there were any other questions by Board Members. There being none, he asked if there were any remonstrators for or against this petition. There being none he asked if there were any questions by Board Members. There being none the Chair entertained a motion.

William McCune made a motion on BZA-SU-07-25 for Lot 8 only that finding of facts be made as follows:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The specific site is appropriate for the USE.
4. The USE as developed will not adversely affect the surrounding area.
5. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
6. Adequate and appropriate facilities will be provided for proper operation of the USE.
7. The USE will be helpful in providing preschool education and daycare to the community.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permit from the Warrick County Building Department.
4. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
5. Subject to all public utility easements and facilities in place.
6. Subject to there being no more than 48 children being enrolled at the preschool/daycare.

Richard Metcalf seconded and the motion unanimously carried.

Mrs. Rector requested Mr. Fields come up and initial his changes to the application and the plot plan.

BZA-SU-07-26 – Applicant: Dan Fritts Properties, Inc. by Dan Fritts, President. Owner: Pearson Acquisitions, LLC by Joe Pearson, Sole Member

Premises – Property located on the N end of Covert Ct. approximately 1200' N of the intersection formed by Covert Ct. and SR 662 Frontage Rd., Lt 2 in I-164 Commercial Park Subdivision also being proposed Lt 2A in I-164 Commercial Park No. 2, Ohio Twp., 5340 Covert Ct.

Nature of Case – Applicant requests a Special Use, SU-23, for the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow self-storage warehouse facilities in a “C-3” Highway Commercial Zoning District.

Mr. Willis stated he had a conflict of interest and requested Mr. Mottley take the Chair.

Mr. Mottley took the Chair and requested a staff report.

Mrs. Rector stated they have all the return receipts from certified mail to the adjacent property owners. She stated this is a Special Use application to allow 313 self storage warehouse facilities. She stated the property is approximately 18.77 acres which is Lot 2 in I-164 Commercial Subdivision zoned “C-3” Highway Commercial. She stated the property to the east is zoned “R-1A” Single Family Dwelling with residences on them and is Landmark Subdivision

and Colonial Hills Subdivision. She stated the property to the south is zoned "C-4" General Commercial with businesses and the property to the west is I-164 and past this is the Atria Assisted Living facility. She stated to the north is zoned "R-1A" single family with Fall Creek Subdivision. She stated the applicant states on the application that it is for approximately 313 warehouse units for self storage and they may also have u-haul rentals, trailer sales and a package shipping UPS office. She stated the application is in order.

Mr. Mottley asked if there were any questions by Board Members.

Richard Medcalf asked what type of fencing if any they would have around this.

Krista Lockyear approached the podium and stated she is the attorney representing the petitioner Dan Fritts Properties, Inc. as well as the owner of the property, Joe Pearson of Pearson Acquisitions, LLC and passed around a picture of a similar facility that is owned by the same petitioner over in Henderson, KY. She stated they show a chain link fence with barb wire across the top. She stated they are asking for this Special Use for the purposes of the self storage warehouse. She stated her clients, Dan Fritts Properties, has two of these facilities already in Henderson and has been in this business for around 17 years and definitely sees the need for this type of facility in Warrick County. She stated the Special Use for self storage happens to come into a "C-3" zoning district in this case. She stated she wants to give a little history of this property. She stated the current owner and the petitioner who is under contract to buy this property have been involved with this land for quite sometime. She stated years ago when it was zoned for Off the Wall Sports, there were extensive covenants put in place to protect the landowners in the subdivision adjacent to the property. She stated there is a berm requirement, landscaping requirement, that gives the neighbors significant assurances that they're not going to be disturbed by anything that would go on at this site. She stated even with that having been put in place it has been a difficult property to develop. She stated the access there has been a concern for everyone. She stated the amount of traffic possibly coming in and out of the property is a concern. She stated they're sitting here looking at a "C-3" zoning which would allow, without any Special Use, a hotel / motel, automobile service station, all kinds of things that generate heavy traffic at all hours of the day. She stated for that reason this self storage warehouse appears to be an ideal use of this property. She stated there will be pretty nominal noise from the property in non-peak hours. She stated her client has indicated that when they studied their facility, they don't have much more than 2% usage during non-peak hours in the evening. She stated even if that buffer that's in place for the adjacent neighbors would not be sufficient to shield the noise, they don't expect much activity at all in there during off peak hours. She stated clearly it's a secured facility; people bring their property in there hence the barb wire at the top of the fence. She stated there's a lot of security in place to avoid anybody from breaking in and being able to steal or vandalize any of the equipment stored on the property. She stated another concern regarding this property, obviously being right on the highway, it's easily accessible, however semi-truck traffic is not allowed into the facility itself so they don't expect much heavy truck traffic coming in. She stated there is a parking area where they would be able to bring a semi in to offload but they are not going to be able to pull right up to the storage warehouses in order to do so. She stated it would take a little bit of work and they think, and have seen with the other properties, that the heavy truck traffic is pretty discouraged simply by the use of this property. She stated she cited the other uses that could be done in the "C-3" District and there are quite a few of them and for that reason they believe that this specific use is perfectly appropriate for this site and will not adversely affect the surrounding areas. She stated the additional criteria when the Board is looking at a Special Use to determine if there will be a nuisance or serious hazard to residents, obviously there will be not. She stated this is a pretty secured facility much more than most they would expect to have in this location. She stated it is in harmony with the Comprehensive Plan and certainly her client's market studies have shown it is desirable for public convenience to have a warehouse storage in this area and they would appreciate the Board's approval and allow them to go forward with the Special Use.

Mr. Mottley asked if there were any questions by Board Members. There being none he asked for remonstrators for or against this project.

Roger Burkhart approached the podium and stated he lives in the Landmark Subdivision and there was a proposal to put a mini-storage in a few years ago and they fought against it and they decided to go do that somewhere else. He stated they still are opposed to a mini-storage, the hours people coming and going 24 hours a day and there are the other items mentioned that could go in there that they couldn't do anything about. He stated they can do something about this one. He stated he's opposed to it for that reason. He stated the berm is missing 9 trees

directly behind his house and since the owner has purchased the property the berm has never been mowed unless he has done it himself. He stated he would ask that the Board deny this.

Mr. Medcalf asked what he said about the berm with trees on it.

Mr. Burkhardt stated the berm is supposed to be 40 feet wide, ten feet on each side flat with a rise in the middle. He stated it is supposed to have staggered pine trees. He stated just from the back of his property line there are nine trees missing so the landscape border Ms. Lockyear is talking about isn't really there. He stated nobody has done anything to fix it or keep up with the berm. He stated the only time it's been mowed in the past two years is when he's done it himself.

Mrs. Rector stated what he is talking about is when this original plat was approved a while ago it was agreed there would be a berm placed there when Off the Wall Sports went in there, it would be a berm with trees between this piece of property and those two subdivisions.

Mr. Medcalf asked if the berm continued north even where the sports building stopped.

Mrs. Rector stated correct. She stated she thinks part of the problem with this property is it was turned back over to a bank so the first owners, whenever Off the Wall did the Subdivision and then went bankrupt or whatever happened, and the bank took it over, now they have new owners and new businesses and a new subdivision that has come in. She stated this berm agreement was part of the original approval of the zoning going way back.

Mr. Burkhardt stated none of the other Landmark people could be here. He stated it is soccer season, football season and everyone has quite a bit going on right now and this is just something they've been dealing with for a long time.

Mr. McCune asked if they had a problem with the building that is up now, the sports store with people going in and out.

Mr. Burkhardt stated they used to when it was Off the Wall sports from time to time.

Mr. McCune stated it still is isn't it.

Mr. Burkhardt stated now it's a Millwright Union and there are only people there until 5 pm and at the latest 7 pm and then it's just empty. He stated back when it was Off the Wall Sports from time to time, they would have night time activities where the speakers would be blaring. He stated other than that it's not been that big of a deal but they've also maintained the berm on their side. He stated all the trees and the grass that is being mowed stops right in back of his house. He stated the property line stops directly behind his fence so he's got this eyesore back behind his fence that's been there for years and nobody has ever dealt with it.

Mr. McCune asked if it is Right-of-Way.

Mr. Burkhardt stated it is a landscaping berm and a buffer easement that they put in whenever they wanted to rezone it.

Mrs. Rector stated it is recorded on the other people's property. She stated this has been through different hands and they've had a lot of problems with this and now it's just now getting to the point where they're subdividing it. She stated the landscaping easement was left.

Mr. Burkhardt stated that at that time they were talking about developing an office park and he understands that plans change and that is why they're back again. He stated the Landmark Homeowner's Association has been opposed to mini storage since the beginning.

Mr. Medcalf asked if he is here on behalf of himself or the Homeowner's Association.

Mr. Burkhardt stated he is here on behalf of himself not the Homeowner's Association.

Mr. Medcalf asked him for his address.

Mr. Burkhardt stated his address is 10766 Drexton Place. He states it is on the northwest corner.

Mr. Medcalf asked if the sports place hooks up to the back of his property.

Mr. Burkhart stated no. He asked if he could see a drawing.

The Board found his property on the plat.

Mr. Medcalf stated the property line does come in the back of Mr. Burkhart's property.

Mr. Burkhart stated just on the other side of the fence because the fence is over a little bit.

Attorney Doll stated Mr. Burkhart's home is to the east of the proposed site and his back property line actually is both behind the proposed site and slightly behind the very northeast corner of the Union's property. He asked if that was correct.

Mr. Burkhart stated yes.

Attorney Doll stated the berm is installed and there are trees planted on it and it appears from one of the aerial photographs that they run to about Mr. Burkhart's back corner. He asked Mr. Burkhart if the north corner of his back lot is where it stops.

Mr. Burkhart stated yes. He stated this mini storage would be an equivalent of a salvage yard in his backyard depending on how the storage works out. He stated if boats and junked out cars are allowed to be stored there, that is really going to hurt their property value.

Attorney Doll stated there appears to be a proposal to build a shed against the berm across from Mr. Burkhart's property line. He stated it looks like it is a 7300 square foot shed. He stated maybe Ms. Lockyear can address that. He stated it looks like it wouldn't be an open view of the lot, it would be the back view of some sort of structure.

Mrs. Rector stated it is one of the storage buildings.

Attorney Doll stated it doesn't have any driveways, that's why he didn't think it was one of the storage buildings and it's labeled the shed and the others are labeled buildings and that's why when he read this he was trying to figure out what the difference was.

Mrs. Rector stated she sees it now too.

Mr. Medcalf stated it looks like a proposed 7500 square foot shed.

Dan Fritts stated it will be two 50'x34' outside shed storage with no electric, no lights, no concrete, no doors, just an open faced shed.

Attorney Doll asked if it will have a back.

Mr. Fritts stated yes it will have a back and it will be 14' high.

Mr. Medcalf asked if in the entrance to the back, if he was standing on the east side which he would assume would be Mr. Burkhart's backyard, what he would be looking at. He asked if he would see nothing but a steel constructed wall.

Mr. Fritts stated he would first see the trees. He stated the trees obliterate a huge percentage of the back of that building. He stated he can't tell you all of it but it will obliterate some.

Ms. Lockyear stated the berm, as she understands, kind of terminates as it is built now and there are some trees missing according to Mr. Burkhart's testimony. She stated her client has said he will certainly replace the trees that are missing and the requirement that the berm be maintained is a binding requirement on the owner of this property. She stated the problem they've had for at least the last year, maybe years, there have been a lot of complaints from the neighbors about this property, the grass not being mowed, it being unsightly, it is a problem and probably a health hazard as it is with the grass growing up that tall and who knows what's running around in the weeds. She stated there is no doubt that once the trees are replaced and this property is developed such that it is useful property should help the landowners back there rather than harm them. She stated they're not going to have a mowing problem, the trees will be replaced. She stated the big elephant in the background is there and it could be a tavern or bar on this property that would have all night business and noise. She stated it is zoned "C-3" and there is a lot that could go in there. She stated if the Board would like to make it a condition of the Special Use, her client has stated he certainly will replace the trees that are missing in that berm. She stated

they will mow and maintain that berm, all that is on their property of course. She stated as a neighbor, looking at anything coming next door to them is a little concerning but having dealt with this property for years and the complaints and the concerns about the tall grass; this should be a great improvement both for the neighbors as well as Warrick County.

Attorney Doll stated it looks like the berm has not been constructed all the way across the property.

Mr. Fritts stated that is correct, there is approximately 242 feet that needs to be extended and they're prepared to do that.

Attorney Doll stated that is the clarification he was looking for. He stated that the petitioner is proposing to the Board, should they approve it, that he would be willing to stipulate to a condition that the berm be completed because it is not completed by the prior owners. He stated the trees need to be planted and missing or dead trees need to be replaced.

Mr. Fritts stated that is correct and they are prepared to do this. He stated they do have a retention area and there is an easement and he's assuming they can go across that easement on the back and finish that berm.

Mrs. Rector stated they'll have to go back to the Drainage Board. She stated they do have Drainage Board approval and everything.

Attorney Doll stated they just dealt with that.

Mrs. Rector stated yes, with this lot.

Mr. Fritts stated it is going to take about 48 trees to do this and it's not a problem to buy ten more trees.

Attorney Doll asked what kind of trees they are.

Mr. Fritts stated Eastern White Pines.

Attorney Doll stated they will ultimately get 14 feet tall, if they all survive.

Mr. Fritts stated probably higher than that, about 20 feet.

Mr. Pearson stated in the area behind Mr. Burkhart's house, there is going to be a 14 foot steel wall because that is the back of that building.

Mr. Medcalf stated he didn't quite get his complete answer. He stated he wanted to make sure that is just going to be a non accessible wall, there is not going to be a driveway there.

Mr. Pearson stated no, there's not going to be a driveway there, no doors, no accessibility what so ever.

Mr. Medcalf asked if that is just being mowed to the berm.

Mr. Pearson stated they are actually going to use that as a fence, they will put the fence across there if need be, but they prefer to extend the fence to each corner.

Attorney Doll asked for clarification, if he's going to use the back wall of the shed as a boundary, by tying the chain link fence to it in both directions.

Mr. Pearson stated the trees are going to be approximately ten foot off the bottom of that berm which is 14 feet high, so it is still not going to reach the top of the present tree line probably by 6 or 8 foot.

Mr. Medcalf stated he's talking about the roof of the structure.

Mr. Pearson stated that is correct.

Mr. Mottley asked for additional questions by Board Members.

Mr. Stahl asked what they intended to put in the area they have for outdoor storage. He asked if this will have the u-hauls for rent or is it actually going to be for storage.

Mr. Fritts stated they will put everything behind the fence that could be damaged or stolen which would also include u-haul trucks. He stated they now sell open wheel trailers and they will put those back there.

Mr. Stahl stated the outdoor storage area will be for things that are for sale or rent and not somebody else renting that space to park a boat or camper.

Mr. Fritts stated they will allow it for open storage, for a boat, RV, which is what the building is for.

Mr. Stahl stated he's talking about the open area.

Mr. Fritts stated that will be for rent, at least a certain portion of it.

Mr. Mottley asked for additional remonstrators for or against.

Mr. Burkhardt asked if he could clarify something. He asked if somebody has a 20 year old junked out car, there could be 80 of those that they want to store.

Mr. Fritts stated they have a policy that everything has to be operable. He stated their facility allows a certain amount of open storage, they will dissect what they want, they do choose what they want, if someone is leaking oil, they are not on this property, they're gone. He stated any EPA violations, they're gone. He stated their pockets aren't that deep.

Mr. Burkhardt stated there are operable vehicles sitting outside the courthouse right now that he wouldn't want parked in his backyard.

Mr. Fritts stated they don't want them in his backyard either.

Mr. Burkhardt stated to the Board, he doesn't think the current property owner not mowing the property is a good excuse for the new potential property owner getting it zoned the way he wants so that he can make it better.

Mr. McCune asked for clarification on that statement.

Mr. Burkhardt stated that Ms. Lockyear stated that over time it's been a current problem that the grass is unmowed, the grass is this tall.

Mr. McCune stated that some of this that he's talking about is okay to be stated in the rules. He stated for example about it being mowed, replacement of trees etc.

Mr. Burkhardt stated Ms. Lockyear is making the argument that giving him this zoning change will allow them to improve the property so that the mowing issue will go away. He stated he doesn't understand how one can make the argument that since the current property owner has not kept up with the property that they should be allowed to rezone the property so that a new property owner can improve it.

Mrs. Rector stated, just for clarification, they are not rezoning this property; this property's zoning will remain the same. She stated this is a special exception.

Mr. Burkhardt stated he misspoke, he meant for a Special Use change. He stated the fact of the matter is he doesn't want a mini-storage right behind his house.

Mr. Mottley asked for any questions by Board Members. There being none he asked for a rebuttal from the petitioner.

Ms. Lockyear stated a point of clarification, as Mrs. Rector pointed out, they are asking for a Special Use, they are not changing the zoning and they are right along I-164. She stated this property was determined years ago that it is appropriate for pretty significant commercial use. She stated it is not a park and she doesn't blame the neighbors for saying, they don't really want anything on this property but something is going to go into that property eventually and it is going to be commercial in nature. She stated it could generate significant noise. She stated her

position to the Board is that her client at this point is willing and is really required to finish out that berm to build on this property, put in approximately 50 trees as a buffer between this gentleman's property and this use is pretty significant. She stated the property will get mowed; it becomes productive property for Warrick County. She stated to refer back to the criteria for a Special Use, which is in this zoning district "C-3", all of this is in an allowable use if it meets these criteria. She stated she thinks this is an appropriate location for the use, commercial use has been determined years ago and this is going to be a pretty quiet use for butting up against residential properties. She stated on the criteria of it not adversely affecting the surrounding area, they've dealt with that the best they can with the berm, the trees, the activity is forward to these folks property. She stated they submit to the Board that the night time activity is pretty slim as compared to what could go on this property without a Special Use. She stated adequate and appropriate facilities are provided for proper operation of the uses, the facilities are already in place, they've got that. She stated the Drainage Board has approved the drainage, the roads have been approved. She stated the subdivision itself is adequate for this use. She stated it is in harmony with the Comprehensive Plan and it is desirable for the public convenience and welfare. She stated she thinks this petition meets every one of the criteria for a Special Use and for that reason and for her belief in her client that he will be a good neighbor to folks behind the property, they ask for the Board's approval.

Mr. Mottley asked for any other questions by Board Members.

Mr. Medcalf asked Mr. Burkhardt if he's in his backyard can he hear traffic.

Mr. Burkhardt stated yes he hears traffic.

Mr. Medcalf asked if he can hear the traffic from the main highway.

Mr. Burkhardt stated yes.

Mr. Medcalf asked if he has considered that a buffer would help the noise.

Mr. Burkhardt stated they had considered that something being there would and that would be a good thing but mini-storage isn't it. He stated cars that are operational, trash sitting out behind his yard is upsetting. He stated unfortunately they have a two story house which is taller than 14 feet. He stated when they go upstairs the field back there is their current view. He stated he understands that it is not always going to be a field and they don't want it to be a field because that field has so many question marks for potential buyers of their property. He stated the problem is when they are talking about car and boat storage they are talking about a salvage yard, whether it's operational or not, it's right in his backyard. He stated that is his issue with it being a mini-storage.

Mr. Mottley asked for further remonstrators for or against the petition. There being none he entertained a motion.

Duane Erwin made a motion findings of fact be made as follows:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The specific site is appropriate for the USE.
4. The USE as developed will not adversely affect the surrounding area.
5. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
6. Adequate and appropriate facilities will be provided for proper operation of the USE.
7. The USE is a listed use in this zoning with a Special Use approval.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to a commercial driveway permitted being obtained and the entrance being constructed or a letter of credit submitted to insure the construction of the commercial driveway. Subject to a commercial driveway being approved according to the plans on file.
2. Subject to a sewer permit being obtained or a letter stating no permit is required.
3. Subject to any required building permit from the Warrick County Building Department being obtained.
4. Subject to an Improvement Location Permit being obtained.
5. Subject to all public utility easements and facilities in place.
6. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
7. Subject to any required water and sewer taps or permits being obtained.
8. Subject to the dead trees being replaced, the new trees planted and the berm be completed and maintained at all times.

Ms. Lockyear stated the Planning Commission can enforce these conditions and the previous one may have just been enforceable by abutting land owners.

Mr. Doll stated he wasn't on the Board when the prior commitment was made so he doesn't know the nature of it but he agrees that this would make it enforceable by Warrick County so Warrick County could make sure these things are done if it is approved.

William McCune seconded and the motion unanimously carried.

Mrs. Rector stated she will have their approval ready Friday.

Mr. Mottley asked if at one time that property was supposed to become low income apartments and the neighbors pushed it.

Mr. McCune stated the remonstrator stated it was the second time for storage.

Mrs. Rector stated they wanted apartments there and the neighbors fought the apartments but it wasn't low income, it was apartments like they had up at Fisher's Indiana. She stated it was a company from up there that wanted to build in there.

Mr. Willis returned and took over the chair from Mr. Mottley.

VARIANCES:

BZA-V-07-27 – Applicant & Owner: Jeff Adler

Premises – Property located on the N side of Sycamore St. approximately 0' W of the intersection formed by Sycamore St. and Fourth St., Greer Twp., Lt 173 in the Town of Elberfeld. 415 Sycamore St.

Nature of Case – Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN, to allow an Improvement Location Permit to be issued for an unattached accessory building exceeding maximum rear yard coverage in an "R-1A" Single Family Zoning District.

Jeff Adler approached the podium.

The Chairman requested a staff report from the Executive Director.

Mrs. Rector stated they have all return receipts from certified mail. She stated the applicant is requesting a variance to allow an unattached garage to be constructed covering more than the maximum allowed rear yard coverage of 30% of the required rear yard. She stated there was an existing garage that was larger than the proposed unattached garage that the applicant has torn

down. She stated the proposed unattached garage is 896 square feet, 272 square feet over the allowed coverage. She stated the property is approximately .18 acres zoned "R-1A" Single Family with the surrounding property being zoned the same with residences. She stated the office did send a letter to the Town of Elberfeld notifying them that this would be on the agenda tonight and if they had any concerns or comments they could send a letter or by Mr. Erwin representing the Board. She stated they did not get any response. She stated the applicant states on the application that he is proposing to build a 896 square foot garage on their lot. She stated he recently tore down an approximately 900 to 960 square foot garage in the existing location with the belief that they could replace it with an equal or smaller structure. The applicant continues over the past few weeks they have purchased materials to construct the new garage in the amount exceeding \$2,500 in trusses, roofing, siding and doors. The applicant continues on the application, to decrease the size of the building would impose a financial hardship. The applicant states that all utilities are marked and this structure keeps a safe distance. Mrs. Rector stated the application is in order.

Mr. Willis asked if the petitioner had anything to add to the staff report.

Mr. Adler stated that is basically it.

Mr. Erwin stated on behalf of the Town of Elberfeld, they did not respond in writing. He stated he went up to Mr. Adler's property and basically looked the situation over. He stated he has torn down a very unsightly and useless building and is going to replace it with a new and decent looking building. He stated the Town of Elberfeld feels like everything is in check as it should be and it is a definite asset to the property.

Mr. Medcalf asked if this went back to the Right-of-Way.

Mr. Adler stated yes sir.

Mr. Medcalf asked if his property line starts at the center of the alley.

Mr. Adler stated it is eleven feet off the side property line.

Mr. Medcalf asked if they went to the center of the alley with the property line as it is described.

Mr. Adler stated yes.

Mrs. Rector stated no, the petitioner is confused, on the drawing where it reads 'alley' you can see the center line. She stated that is the end of the alley right-of-way and that's his property line. Mrs. Rector stated it is a platted alley in a town.

Attorney Doll stated this is Lot# 173 in the original plat of the Town of Elberfeld which means the property could go to the center of the alley or not, just depends on how the plat was done. He stated when he saw R-O-W, he would have thought that they own to the center of the alley and that there's a public R-O-W of 6' on his land. He stated if that's right and he doesn't own to the center of the alley then the drawing is wrong.

Mr. Erwin stated he doesn't.

Attorney Doll stated then that's not right-of-way, that's a publicly platted street.

Mr. Erwin stated he's correct where he's off of it. He stated he's five feet off the edge of that street. He stated he is right where he should be.

Attorney Doll stated it is not a right-of-way. He stated it is a publicly platted street.

Mr. Erwin stated it is a publicly platted alley.

Mr. Medcalf asked if the applicant is sure there are no buried utilities.

Mr. Adler stated he's had everything marked.

Mr. Medcalf asked if everything is clear then.

Mr. Adler stated yes.

Mr. Willis asked if there were any other questions by Board Members. There being none he asked for any remonstrators for or against this petition. There being none he entertained a motion.

Don Mottley made a motion findings of fact be made as follows:

1. The Variance will not result in substantial detriment to adjacent property or the surrounding neighborhood, and will not be materially detrimental to the public welfare.
2. The Variance is a means of relief because of the size of the properties and location of existing structures for the owner to have rights to some reasonable use of the property.
3. That the circumstances of the lot size and existing structures cause a hardship peculiar to the property and clearly constitutes a marked exception to the property in the neighborhood.
4. By granting this Variance, the applicant will be able to use the property as it previously existed and would be an improvement to the property.

And the application be approved in accordance with the application and plans on file subject to the following conditions:

1. Subject to an Improvement Location Permit being obtained.
2. Subject to any required Building Permit from the Warrick County Building Department being obtained.
3. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
4. Subject to all utility easement and facilities in place.

Duane Erwin seconded and the motion unanimously carried.

Mrs. Rector stated to the petitioner his approval would be ready on Friday and he could come in and get his permit.

Mr. Erwin stated to the petitioner he wants to thank him for cleaning up the area the way he did.

OTHER BUSINESS:

BZA-V-07-07 – Applicant & Owner: Charles, L. Dillehay – Requesting additional time to raise the existing house.

Mr. Willis asked if Mr. Dillehay was present.

Mrs. Rector stated no he isn't, he brought pictures into the office showing the house is raised as of today. She stated he had written a letter that he didn't think it was going to be and he needed more time. She stated she went by there and she knows it's gone.

ATTORNEY BUSINESS:

Attorney Doll stated they have a lawsuit that was filed in 2005 against the BZA. He stated it is Monte Williams Irrevocable Trust and Monte Williams. He stated he reported to the Board previously that the new attorney had appeared late spring, early summer and filed a motion for a hearing in the case and when he spoke with him after the Board authorized him to represent them in that matter, he discovered that the court has filed the BZA's motion to dismiss the case for failing to meet the technical requirements of bringing the litigation against the BZA and it had never been heard and it just slipped through the cracks. He stated it is still pending; it has never been acted upon etc. He stated the attorney for Mr. Williams told him that he thought perhaps he would be dismissing the lawsuit after he had an opportunity to spend some time looking at it and conversing with his client. He stated he has called him since middle summer and he had called him twice this week to find out if he is or isn't dismissing it because he wants it off the books

and he can't get him to respond to him. He stated he has not gotten a return phone call, he's always in court. He stated he thinks, unless the Board instructs him otherwise, by Friday he's just going to file a simple motion with the court and ask them to hold a hearing on the pending motion to dismiss and try to persuade somebody to do something about this matter. He stated either the judge will hopefully will rule in the BZA's favor and dismiss the litigation or that will spur Mr. Williams's attorney to get off the dime and do something about dismissing the case as he indicated he might. He stated he hopes to have it put out by the close of business Friday.

Mr. Medcalf asked if the attorney could send him a certified letter.

Attorney Doll stated he can, he has to send him a copy of the motion, he figured he could just file the motion and send a copy to him and it will kill two birds with one stone. He stated if the Board wants him to write him a letter and instruct him that he's been told either proceed or file a motion for a hearing and give him an opportunity to do that he will do that first.

The Chairman stated he thinks he needs to just file the motion to dismiss.

Attorney Doll stated the motion is filed, he just needs to ask for a hearing on it. He stated it is his predecessor's motion; it was filed before he became council and it has been laying there.

The Chairman stated he thinks it's rather rude that the other council is not returning his phone call one way or the other.

Attorney Doll stated he agrees.

The Chairman made a motion to ask for a hearing and get the ball rolling.

Duane Erwin seconded and the motion unanimously carried.

• • • • •

Susan & Blain Barclay from 10733 Bessing approached the podium and stated they were told to come to this meeting to ask for more time to remove their house.

Mrs. Rector stated they weren't put on the agenda and she didn't know anything about it. She stated they will amend the agenda. She stated she is assuming they received a variance to have two houses on a piece of property and were given so much time to remove the old residence after completion of the new one.

Susan Barclay stated they lived in an old farmhouse and built a new home on the property and was given so much time to vacate.

Mr. McCune stated probably 90 days.

Susan Barclay stated they were given a year but it just hasn't been enough.

Mrs. Rector asked when their year was up.

Mrs. Barclay stated this month.

Mr. Erwin asked how close they are to finishing.

Mrs. Barclay stated they have it pretty much empty except for things they are going to dispose of. She stated there are things they want to salvage from the home and they want to try and tear it down themselves versus incurring the expense of having someone do it for them.

Mr. McCune asked how much time they are looking for.

Mrs. Barclay stated it took them longer to empty the home then they really anticipated.

Mr. Mottley asked if they would need four more months.

Mrs. Barclay stated she doesn't know if that's enough. She stated they both work full time they have small children, and they are going to do it by themselves. She stated they know how much time it took to go through things and empty it and it took a lot more time then she anticipated. She stated she hopes it wouldn't take that long but realistically she doesn't know.

Mr. Willis asked where her home is located.

Mrs. Barclay stated in Elberfeld, not in town.

Mr. Medcalf asked if they are in their new home.

Mrs. Barclay stated it took a while to transition into the new home.

Mr. Medcalf asked if her new home is out front or behind.

Mrs. Barclay stated behind and south.

Mr. Barclay stated it is a 40 acre plot of land.

Mr. Erwin asked if they are where their grandmother lived.

Mrs. Barclay stated yes. She stated it's an old farmhouse and they only lived in the lower portion of the house and had lots of storage upstairs and had been there for ten years and lots of stuff accumulated.

Mr. Willis asked if anyone is living in the house.

Mrs. Barclay stated no.

Mr. Willis asked if they had water turned on.

Mrs. Barclay stated the water has been turned off. She stated they have electric because they need lighting to sort things.

Mr. McCune asked if there is a stove.

Mrs. Barclay stated there is an old stove but no refrigerator.

Mr. McCune asked if there is any gas running to it.

Mrs. Barclay stated it is still hooked up, they haven't had it discontinued.

Mr. Barclay stated there is a tank there.

Mr. Erwin made a motion to give them six months.

Mr. McCune stated they will be getting into the winter months and that's the big problem.

Mr. Erwin stated when you can't do anything else they can tear something down.

Mr. McCune stated they could give them six months and if it doesn't work they have to come back and ask again.

Mrs. Rector stated they would have to show progress.

Mrs. Barclay stated they have shown progress.

Mr. Willis stated they have built the residence, if he remembers correctly, by themselves.

Mrs. Barclay stated no they had a contractor but they allowed them time for that and then allowed time to get the old house empty and to be down. She stated they have small children and they're only small once.

Duane Erwin repeated his motion to allow them six months.

Don Mottley seconded.

Mr. McCune stated he thinks they should give them 8 months because that would get them out of the winter months and gets them into May and May would be a better time to finish the work that they can't get done.

Mr. Erwin asked Mr. Mottley if he wanted to withdraw his second.

Mr. Mottley withdrew his second.

Duane Erwin amended his motion to allow them 8 months to complete the raising of the old farmhouse.

Don Mottley seconded.

Mr. Willis asked when the 8 months starts.

Mr. Erwin stated tonight.

Mr. Willis stated they are looking at May 26th, the date of the May 2008 meeting.

The motion unanimously carried.

EXECUTIVE DIRECTOR BUSINESS:

She asked the Board if they got a letter from her inviting them to the October 23rd meeting on the changes in the flood plain map.

Mr. Mottley stated yes, they got emails.

Mrs. Rector stated good, she just wanted to check. She stated she'll send out a reminder before the meeting.

Mr. Willis asked if they need to make reservations to that afternoon meeting so they know how many is coming.

Mrs. Rectors stated no.

Attorney Doll stated he needs to point out he will not be at the October meeting. He stated he talked to Mrs. Rector about it, if the Board wants him to he can find a replacement for that night to be there in his place. He stated he doesn't know what the agenda will be at this point and time. He stated he's going to be on a vacation with his family that particular night.

Mr. Willis asked what would be the latest to let him know they want a replacement. He asked if by the filing date would be sufficient.

Attorney Doll stated yes and asked Mrs. Rector if that would work.

Mrs. Rector stated yes.

There being no other business Larry Willis entertained a motion to adjourn the meeting.

Duane Erwin made a motion to adjourn. Don Mottley seconded and the motion unanimously carried.

The meeting adjourned at 7:10 pm.

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Area Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held September 26, 2007

